Calendar No. 669

99TH CONGRESS *2d Session*	SENATE	REPORT 99-316

AN ACT TO EXTEND THROUGH FISCAL YEAR 1988 PILOT PROGRAMS UNDER SECTION 8 OF THE SMALL BUSINESS ACT

REPORT

OF THE

COMMITTEE ON SMALL BUSINESS UNITED STATES SENATE

TO ACCOMPANY

H.R. 2787

JUNE 5 (legislative day, JUNE 2), 1986.—Ordered to be printed

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EXTENDING PILOT PROGRAMS UNDER SECTION 8 OF THE SMALL BUSINESS ACT

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Mr. WEICKER, from the Committee on Small Business, submitted the following

REPORT

[To accompany H.R. 2787]

The Committee on Small Business to which was referred the act H.R. 2787 to extend through fiscal year 1988 Small Business Administration [SBA] pilot programs under section 8 of the Small Business Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. COMMITTEE CONSIDERATION

H.R. 2787, an Act to amend the Small Business Act to extend through fiscal year 1988 two SBA pilot programs which expired on September 30, 1985, passed the House of Representatives on December 16, 1985, and was referred to this Committee. A legislative hearing was held on March 27, 1986. Testimony was received from the Small Business Administration and the Department of Transportation. Also, minority contractors and the Chairman of the House Small Business Committee, Representative Parren J. Mitchell, testified in support of H.R. 2787 and the reauthorization of the pilot programs. The Committee also received written statements in favor of the legislation from the National Association of Minority Contractors, the Latin American Manufacturers Association, the National Federation of 8(a) Companies and the Black Presidents' Round Table Association.

On May 21, 1986, the Committee held a mark-up session, and ordered H.R. 2787 favorably reported. One roll call vote was taken in committee with respect to this legislation. The bill is as follows:

SECTION 1. (a) Subparagraph (B) of section 8(a)(1) of the Small Business Act is amended by striking out "(other than the Department of Defense or any component thereof)".

(b) The designation of any agency pursuant to the amendment made by subsection (a) shall be made not later than sixty days after the date of enactment of this Act.

SEC. 2. The last sentence of section 8(a)(1) of the Small Business Act is amended to read as follows: "No contract may be entered into under subparagraph (B) after September 30, 1988.".

SEC. 3. The last sentence of section 8(a)(2) is amended to read as follows: "The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.".

II. LEGISLATIVE HISTORY AND BACKGROUND

Section 8(a) of the Small Business Act authorizes the Administrator of the Small Business Administration (SBA) to enter into contracts with Federal agencies and to subcontract the work to socially and economically disadvantaged small businesses. Prior to 1978, the 8(a) program was administered by SBA primarily to provide minority business with an opportunity to contract with the Government. The program lacked any specific mission beyond contract assistance to minority business. Public Law 95–507, enacted on October 24, 1978, among other things gave a statutory structure to the 8(a) program, created the Office of Associate Administrator for Minority Small Business and Capital Ownership Development, and placed greater emphasis upon the business development of minority firms certified for participation in the program.

Public Law 95–507 also established two pilot programs to improve SBA's ability to develop minority firms certified for the 8(a) program. Each is described below.

A. PROCUREMENT PILOT PROGRAM

Public Law 95–507 authorized the President to designate an agency with which SBA would have the additional authority to select and negotiate any contract requirements that SBA deemed appropriate for inclusion in the 8(a) program. The pilot authority was granted for a 2-year period. The significant language of Public Law 95–507, section 202(a), which established this program states:

> It shall be the duty of the Administration [SBA] and it is hereby empowered whenever it determines that such action is necessary or appropriate . . . to enter into contracts with such agency, as shall be designated by the President . . . to furnish articles, equipment, supplies or to perform construction work for such agency. In any case in which the Administration certifies, to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer.

Under the regular 8(a) procurement program, a procuring agency is given full discretion to "volunteer" requirements to SBA for use in the 8(a) program. Under the pilot program, SBA is given the authority to select and negotiate any requirement from the designated agency that it deems appropriate for inclusion in the 8(a) program. The head of the participating agency, however, retains authority over the final terms and conditions under which the contract will be awarded to SBA for subcontracting to the socially and economically disadvantaged firm selected by SBA to perform the contract.

The first test of the pilot program began in 1979, when the President designated the Department of the Army as the pilot agency. However, SBA and the Department of the Army were unable to enter into an interagency agreement setting forth the formal terms and arrangements for joint implementation of the pilot program until May 24, 1979—nearly 5 months later. Thereafter, the first contract was not signed under the program until September 27, 1979, nearly one year after enactment of the pilot authority.

Because of failures by SBA and the Department of the Army to adequately implement the pilot program and Congress' concern that the program had not been fully tested, the program was extended by Public Law 96–481 until September 30, 1981.

In 1983, Congress determined that the pilot concept should be tried in a civilian agency. Under Public Law 98–47, the pilot was extended a second time until September 30, 1985, this time specifically in a non-defense agency. The Department of Transportation was designated by the President as the pilot agency. Since that designation, fourteen projects were identified and agreed upon by DOT and SBA for the pilot program, totaling an estimated value of approximately $230.5 million. Twelve have been awarded; one project is being negotiated and one was withdrawn.

B. SURETY BOND WAIVER PILOT PROGRAM

The second two-year pilot program established by Public Law 95–507 authorizes SBA to waive federal bonding requrements to 8(a) contractors who are start-up businesses and have been in the program for one year, provided that certain other statutory and regulatory conditions are met. Although this program was previously extended by Public Law 96–481 and Public Law 98–47 and SBA has promulgated regulations, in fact, no bonding requirements have ever been waived.

III. Need to Extend the Pilot Programs

A. PROCUREMENT PILOT PROGRAM

The intent of Congress in establishing and extending the pilot procurement program was mainly twofold: (1) to test the feasibility of granting the Small Business Administration [SBA] additional authority to select, not merely request, and negotiate contracts that foster enhanced business development opportunities for 8(a) firms, and (2) to upgrade the quality of contracts selected for 8(a) firms from traditional service or non-professional, to technically sophisticated, high-dollar volume awards. The Committee is basically

pleased with progress made in the past two years since the Department of Transportation [DOT] was designated by the President as the pilot procuring agency, particularly in view of the comparative difficulty experienced in implementing the program with the Department of the Army. SBA and DOT, unlike in the Army pilot, did successfuly negotiate an interagency agreement outlining operating procedures for the program in a timely manner. However, the time-frame mandated for the 1983–85 extension was not sufficient to fully implement and test the program, as intended by the goals of Congress. Therefore, the Committee recommends that the pilot program be extended as proposed in H.R. 2787.

The Committee notes that although SBA and DOT took a "cooperative" approach in implementing the pilot program which enhanced their working relationship, valuable time was lost in this effort at the beginning of the pilot. For example, discussion between committee and DOT staffs revealed that at least one of the two years of the program was consumed in establishing a smooth and effective mode of operation for the two agencies and prospective contractors. While the interagency agreement between DOT and SBA to implement the program was negotiated and signed November 3, 1983, the first contract award to an 8(a) pilot firm was not made until August 29, 1984, nearly a year later. In fact, of the fourteen pilot projects set aside by DOT, only nine had resulted in final contract awards by December 1985, after the program had officially expired.

The Committee generally believes that the types of contracts selected for the pilot have been of higher quality than traditionally offered under the 8(a) program. Most of the 14 projects were technically sophisticated, high-dollar volume, long-term contracts with a total estimated dollar value of approximately $230.5 million. The actual dollar value awarded to date is approximately $49 million. Twelve of those contracts have been awarded, one was withdrawn and one is being negotiated. They are listed and described in the chart below.

Contractor	Description	Date of award	Amount awarded to date	Total estimated value
Sonicraft, Inc.	Radio control equipment	June 3, 1985	$14.5M	$56.5M
Amex Systems, Inc.	Automated weather observing station	Feb. 28, 1986	2.9M	42.4M
Systems and Applied Sciences Corp.	Very high frequency direction finder system	Oct. 19, 1984	8.9M	58.9M
New Bedford Panoramex	Airport remote monitoring system	Sept. 30, 1985	10.0M	50.0M
AMAF Industries, Inc.	Design, construct and maintain communications station control system.	Feb. 24, 1986	4.7M	50.0M
General Railroad Equipment and Services, Inc.	Design and manufacture telescoping helicopter hangars.	May 8, 1985	650,000	6.0M
Technical Management Services Corp.	Computerized maintenance system development	Apr. 15, 1986	1.3M	2.0M
Capital Systems	Teleprocessing	July 8, 1985	440,000	1.34M
Six Carpenters	Construction of medical care center, National Guard.	Sept 26, 1984	3.4M	3.5M
Gemnin Construction Corp	Rehabilitation of 500-man barracks	Jan 9, 1986	759,000	895,000
Lee Wan & Associates	Develop standards for hazardous materials packaging.	Apr. 14, 1985	750,000	750,000
Earth Engineering & Sciences, Inc.	Soil nailing to stabilize highway cutslopes and excavations.	Sept. 25, 1985	247,331	247,331

Contractor	Description	Date of award	Amount awarded to date	Total estimated value
Batchlor Construction Co	New operating station at Curtis Bay, MD	Withdrawn		
To be determined	Construction of operating station at Crisfield, MD	Under review		
Total			48,546,331	230,532,331

At the March 27, 1986, Committee hearing, SBA and DOT testified that contracts awarded in the pilot would have been provided under the regular 8(a) program. Testimony from contractors at that hearing reported exactly the opposite. Presidents of pilot firms unequivocally testified that the pilot program had provided contract opportunities which would otherwise not have been designated for the 8(a) program. For example, Jerry Jones, President of Sonicraft, Inc. of Chicago, Illinois, stated, "The Federal Aviation Administration would not have awarded Sonicraft its current contract [to design, manufacture and test radio control equipment] in the absence of the Pilot Program, even though our company was capable of performing the requirement in comparison with other large companies. . . . The federal government tends to believe that large contracts should be awarded to large companies; the pilot program is changing this view. . . ." Mr. Robert Ozuna, President, New Bedford Panoramex of Santa Fe Springs, California, further stated, "It is essential that the pilot program continue because of the unique procurement opportunities it provides to small companies, specifically in performing multiyear, high-tech requirements . . . The DOT pilot contract has been critical in the development of my company." Other pilot contractors, in discussion with Committee staff also stated that pilot contracts, to a greater extent than regular 8(a) awards, enhanced their businesses' development, enabled them to compete with large companies in areas of high technology and increased employment opportunities in their communities.

The National Association of Minority Contractors (NAMC) also submitted written testimony for the record in support of the program. This statement included the following:

> NAMC fully supports the passage of H.R. 2787. . . . These pilot programs go much further than the regular 8(a) program. Generally, under the 8(a) program the federal agencies have final authority on which contracts to select for the program. Under the pilot program, however, the Small Business Administration [SBA] may unilaterally select from an agency, in this case the Department of Transportation [DOT], any contract for use in the 8(a) program. The greatest benefit of the particular 8(a) company involved, however, is that the contract selected must have high-dollar value, or high-dollar value potential or substantial growth potential. Moreover, the selected contracts would be those not otherwise offered by DOT under the 8(a) program.

A letter from the Latin American Manufacturers Association [LAMA] also included a strong statement of support for the program.

> The 8(a) pilot program has given the SBA a significant tool to help leverage larger, more technical requirements for minority firms from the Department of the Army and the Department of Transportation, the two agencies wherein the pilot authority has been used on a test basis. There is absolutely no doubt that the types of requirements let by the Army and DOT would not have occurred without the pilot program.

The Committee also notes that most pilot contracts were identified and selected by DOT, with the aid of prospective minority contractors, not SBA. While this arrangement worked well for the program, the selection authority intended by the legislation was not fully exercised. Consequently, this Committee recommends that SBA become more actively and aggressively involved in the selection of requirements and contract designation, upon enactment of H.R. 2787.

Specifically, the Committee strongly urges SBA's field personnel to identify contracts for the pilot program and match these requirements with appropriate 8(a) firms. SBA's business development specialists and procurement center representatives are familiar with the capabilities and strengths of minority firms in their region and are in a better position to suggest a "marriage" of a particular contract with a business. These recommendations for contract selection under the pilot authority should be transmitted to SBA's central office for an expeditious review and final decision.

The Committee believes that greater involvement of field personnel in the selection of contracts will result in an increase in the volume of higher quality requirements being awarded to 8(a) firms and a broader geographical distribution of contracts.

Finally, under the terms of H.R. 2787, the President may designate a civilian or military agency for the pilot. Testimony presented at the Committee hearing by two of the contractors as well as Congressman Mitchell, however, urged that the pilot continue in the Department of Transportation. While this bill does not circumscribe the President's designation of a pilot agency, the Committee believes that, for reasons stated earlier, this extension of the program should remain with a civilian agency, preferably the Department of Transportation.

In view of the quality of contracts offered under the pilot program, the strong statements of support by participating contractors and the continuing need to promote minority business development through the federal procurement process, this Committee is of the opinion that an extension of the procurement pilot program is warranted as proposed in H.R. 2787.

B. SURETY BOND WAIVER PILOT PROGRAM

The surety bond waiver pilot program authorizes SBA to waive federal bonding requirements for 8(a) contractors who are startups and in the program for one year or less, provided that the following conditions are met:

(1) The firm cannot secure the requisite bond(s) needed for the job with or without an SBA guarantee;

(2) SBA will take such steps as may be appropriate to protect supplies and laborers of the 8(a) firm; and

(3) SBA determines that the firm has the potential of becoming bondable if assisted for the limited time by the bond waiver.

Although the bond waiver program was first enacted in October 1978, SBA did not publish regulations to implement the progam until December 1980. According to testimony submitted for the record, SBA Central Office apparently made very little effort to promote the program in field offices; since its reauthorization in 1983, only one reminder notice of the bond waiver program's existence was issued on July 18, 1985, two months before the pilot authority expired. Notice of program regulations was never sent directly to 8(a) firms. "Rather, they received notice when the regulations were published in the Federal Register on December 17, 1980," according to SBA. SBA's general resistance to inform contractors or to promote the program has impeded evaluation of this business development tool and denied 8(a) start-up firms an opportunity to perform federal contracts.

Conceptually, SBA has argued that firms that are unable to obtain bonding in the private market would likely default and even if a firm satisfactorily performed a contract under a bond waiver, it would still have no track record in the private sector bond market. The Committee's concern is that SBA has prematurely and subjectively reached these conclusions without the benefit of testing the program. It could very well be that a company's successful performance of a requirement under a waiver would provide sufficient capital to enable the firm to obtain bonding on future contracts. The fundamental intent of the bond waiver program is to provide young portfolio 8(a) firms, whose capabilities match the proposed requirement, an opportunity to perform federal contracts.

Additionally, SBA argues that it does not have the expertise or evaluative skills necessary to execute a surety bond waiver for contractors with "little or no experience." In response to this asserting, Congressman Parren Mitchell, Chairman of the House Committee on Small Business, points out that:

> . . . SBA is required by statute to certify to a particular buying activity that the 8(a) firm nominated to perform a requirement is competent and resonsible to do so. Proper administration of the surety bond waiver program would, of course, require SBA to exercise sound underwriting judgment in determining when an 8(a) firm is capable of performing a particular requirement and should therefore receive a bond waiver. Consequently, the pilot legislation requires SBA to do nothing that it is not already required to do, under the law, which is to assess the ability of a contractor to perform a specific job.

The need for the program is further reflected in a letter sent to the Committee by Ralph Thomas, President of NAMC, which states, "The Surety Bond Waiver Component of H.R. 2787 is urgently needed—now more than ever. A nationwide study which NAMC has just completed indicates that lack of the availability of bonding is the number one reason given by minority contractors

for being unable to perform large construction contracts. Frequently, the minority contractor has successfully bid on a contract but was not eligible to perform due to the unavailability of bonds to minority enterprise in today's stringent marketplace. [This] problem causes the loss of jobs, tax revenues and entrepreneurial initiative. The bond waiver would go a long way toward eliminating this problem."

This Committee is keenly aware that bonding problems have contributed to the inability of a number of minority businesses to secure contracting opportunities with the Federal Government. Denying young firms an opportunity to perform government contracts solely because they do not have the financial history to acquire surety bonding not only defeats the program's purpose, but is also an impediment to economic and business development that is vital to continued growth in communities throughout our nation. Thus, there is clearly a need to extend the surety bond waiver pilot program as opposed by H.R. 2787. Furthermore, the Committee believes SBA must actively implement the concept so that the usefulness of the bond waiver authority can be observed, measured and objectively evaluated.

C. CONCLUSION

The pilot procurement program with the Department of Transportation as the designated procuring agency, has provided unique business opportunities for firms in the 8(a) program. Testimony by contrctors confirmed that existence of the pilot provided the crucial link for making these opportunities available. While the Committee believes the program can be improved, an extension of the pilot as proposed by H.R. 2787 is needed to allow SBA and DOT a chance to build on the experience developed thus far. Extending the program would also provide Congress additional information to evaluate aspects of the program which were not fully implemented in the DOT pilot.

Finally, the Committee recommends that SBA implement the Surety Bond Waiver program in order that Congress may gather empirical data to assess the usefulness of what appears to be a valuable business development vehicle for start-up 8(a) firms.

IV. SECTION-BY-SECTION ANALYSIS

Section 1 subsection (a) would amend subparagraph (B) of Section 8(a) (1) of the Small Business Act by striking out "(other than the Department of Defense or any component thereof)" thereby allowing the President to designate any civilian or military agency for participation in the procurement pilot program.

Subsection (b) provises that the designation of any agency made pursuant to subsection (a) shall be made no later than sixty days after the enactment date.

Section 2 would amend the last sentence of Section 8(a)(1) to provide that no contract shall be entered into under the procurement pilot program established by subparagraph (B) after September 30, 1988.

Section 3 amends the last sentence of Section 8(a)(2) to provide that the authority to waive bonds provided for in paragraph (2) may not be exercised after September 30, 1988.

V. Matters Required to be Discussed Under Senate Rules

A. COMMITTEE VOTE

In compliance with Rule XXVI (7)(B) of the Standing Rules of the Senate, the following roll call vote was taken in committee during consideration of this legislation:

On motion by Senator Kerry to report H.R. 2787, the vote was:

YEAS—18	NAYS—0
Weicker	
Boschwitz	
Gorton*	
Nickles	
Rudman*	
D'Amato*	
Kasten*	
Pressler*	
Trible	
Bumpers*	
Nunn*	
Sasser	
Baucus	
Levin	
Dixon	
Boren*	
Harkin	
Kerry	

* Indicates vote by proxy

B. COST OF LEGISLATION

In compliance with Rule XXVI of the Standing Rules of the Senate, the committee estimates that the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 28, 1986.

Hon. Lowell P. Weicker, Jr.,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2787, an act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act, as ordered reported by the Senate Committee on Small Business, May 21, 1986. We expect that enactment of this bill would result in costs of approximately $500,000 in each of the fiscal years 1987 and 1988, and about $100,000 in 1989.

H.R. 2787 would establish an 8(a) minority pilot procurement program and a surety bond pilot program within the Small Business Administration [SBA]. These pilot programs both expired October 1, 1985.

The regular SBA 8(a) procurement program allows the SBA, with the concurrence of a federal agency, to set aside agency procurements for minority contractors. Under the proposed pilot program, SBA is given sole authority to select agency procurements for exclusive bidding by minority contractors. The Administration would have the authority to designate an agency for the pilot program.

Based on information from the Department of the Army and the Department of Transportation [DOT], each of which has participated in earlier pilot programs, we estimate that $300,000 to $500,000 annually was spent for program, technical, contract and liaison personnel to select and monitor these contracts. (The Army awarded contracts totaling $95 million under the earlier pilot programs. To date, DOT has committed about $240 million, and disbursed about $50 million, under the last pilot program.) Administrative costs to the SBA are estimated to be about $100,000 to $200,000 annually. Although no funds are authorized in the bill for this purpose, we estimate that the designated agency as well as SBA would require similar levels of resources—totaling about $500,000 a year—to implement the minority pilot procurement program.

The SBA pilot surety bond program would allow SBA to waive federal bonding requirements for certain 8(a) contracts. Under the earlier pilot programs, the agency issued no waivers, and few waivers would likely be granted if this program were reestablished. We therefore expect that this provision would result in no significant cost to the federal government.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director.)

C. REGULATORY IMPACT STATEMENT

In compliance with Rule XXV(11)(b) of the Standing Rules of the Senate, it is the opinion of the committee that no significant additional regulatory impact would be incurred in carrying out the provisions of this legislation; there would be no additional impact on the personal privacy of companies or individuals who utilize the services provided; and there would be no additional paperwork impact resulting from the enactment of this bill.

D. CHANGES IN EXISTING LAW

In compliance with Rule XXVI(12) of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * * * *

SEC. 8(a)(1) It shall be the duty of the Administrator and it is hereby empowered, whenever it determines such action is necessary or appropriate—

* * * * * * *

(B) to enter into contracts with such agency, [(other than the Department of Defense or any component thereof)] as shall be designated by the President, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and . . .

* * * * * * *

No contract may be entered into under subparagraph (B) after September 30, [prior to October 1, 1983, nor after September 30, 1985.] *1988.*

(2) Notwithstanding subsections (a) and (c) of the first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works," approved August 24, 1935 (49 Stat. 793), no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided,* That the Administrator shall exercise the authority granted by the paragraph only if . . .

* * * * * * *

The authority to waive bonds provided in this paragraph (2) may not be exercised [prior to October 1, 1983 nor after September 30, 1985], *after September 30, 1988.*

O